

## APPELLATE CIVIL.

1914

March 24.

*Before Fletcher and Richardson JJ.*

MANINDRA CHANDRA NANDI

v.

SECRETARY OF STATE FOR INDIA.\*

*Land Acquisition—Bustee Land—Valuation, principle of—Calcutta Municipal Act (Bengal Act III of 1899) s. 557, sub-ss. (c), (d)—Market-value—Inadmissibility of evidence with regard to sales of other lands in the neighbourhood—Land Acquisition Act (I of 1894) ss. 6, 23.*

When a land is compulsorily acquired, any use to which the land may be put in future should not be taken into consideration in determining its value. The valuation should be according to the market-value at the time of the acquisition. Sub-s. (c) of s. 557 of the Municipal Act precludes evidence being given of other purposes to which *bustee* land can be put in future. Evidence, relating to the under-tenants and rents paid by them is not relevant for the purpose of ascertaining the market-value as defined by sub-s. (c) of s. 557 of the Municipal Act.

*Harish Chunder Neogy v. Secretary of State for India* (1) followed.

APPEAL by Maharaja Manindra Chandra Nandi, the claimant No. 1.

This was an appeal from a judgment of the Land Acquisition Judge of 24-Parganas refusing to modify the Collector's award with respect to a portion of premises No. 273, Upper Circular Road, Calcutta, having an area of 6b., 7k., 11ch., 20sq. ft. acquired for the purpose of making a road for the main sewer of the fringe-area drainage. The declaration for the acquisition of this land was published in the *Calcutta Gazette* on the 3rd of February 1910.

\* Appeal from Original Decree, No. 344 of 1911, against the decree of Arthur Goodeve, Special Land-Acquisition Judge of 24-Parganas, dated May 8, 1911.

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The Collector awarded compensation at the rate of 700 per katta for an area of 3b., 12k., 6ch., 30sq. ft. forming the front portion of the land in question to a depth of 60 ft. from the Ultadingi Junction Road and at the rate of Rs. 450 per katta for an area of 2b., 15k., 4ch., 35sq. ft. forming the back portion of the land.

Claimant No. 1 objected to the Collector's valuation of the land and went up to the Special Land-Acquisition Judge who affirmed the Collector's award. Being aggrieved with the order of the learned Judge claimant No. 1 appealed to this Court.

*Mr. Casperz* (with him *Babu Jogesh Chandra De*, *Babu Jyoti Prasad Sarbadhikari*, *Babu Hemendra Nath Sen* and *Babu Sarat Kumar Mitra*), for the appellant, submitted that a whole mass of evidence had been excluded from consideration—material important evidence, namely, evidence as to sales of properties in the neighbourhood. Evidence of the sales in the neighbourhood would undoubtedly have been the surest basis for the assessment of the value of the land in question under section 23 of the Land Acquisition Act. This evidence was clearly admissible to prove the lucrative disposition of the land. We have not only been shut out from giving evidence of sales in the neighbourhood but we have also been kept back from giving evidence of the rental.

Section 557 of the Municipal Act should be taken as a whole and should be read in a reasonable way. We must, to be just, always see what an ordinary purchaser could pay. We have it in evidence that the Maharaja was offered Rs. 1,200 per katta but he refused the offer.

*Babu Ram Charan Mitter*, for the respondent, was not called upon.

FLETCHER, J. This is an appeal from a judgment of the learned Special Land-Acquisition Judge of 24-Perganas, dated the 8th May 1911. The land which has been acquired for a public purpose is a certain piece of *bustee* land situated in Halsi Bagan within the original jurisdiction of this Court, that is, within the limits of the Presidency town, and the statutory powers under which the land has been acquired are the Land Acquisition Act of 1894 as varied by section 557 of the Calcutta Municipal Act (Bengal III of 1899). The point that has been argued before us in this appeal turns solely upon the question whether the learned Judge of the Court below placed a right construction on the provisions of that section of the Calcutta Municipal Act and was right in excluding evidence as to sales of the properties in the neighbourhood which were not sales of *bustee* lands. The learned counsel for the appellant conceded that, unless he could satisfy us that the learned Special Land-Acquisition Judge had erred in excluding that evidence, there was no evidence before us on which we ought or could award to the appellant more than Rs. 590 a kattah which has been allowed by the lower Court.

Now, section 557 of the Calcutta Municipal Act provides as follows:—"Any land or buildings which any Municipal authority is authorised by this Act to acquire," that means one of the three Municipal authorities, namely, the Corporation, the General Committee, and the Chairman who are the three Municipal authorities to carry into effect the Act, "may be acquired under the provisions of the Land Acquisition Act, 1894; and for that purpose the said Act shall be subject to the following amendments." We may here mention only one of the amendments which is necessary for our purpose and that is (c) which

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provides "the market-value of the land or building shall be deemed, for the purposes of clause *first* of sub-section (1) of section 23 of the Land Acquisition Act, to be the market-value according to the disposition of the land or building at the date of the publication of the declaration relating thereto under section 6 of the said Land Acquisition Act." The clause is not very happily worded but it is quite clear what it means, namely, that when a land is compulsorily acquired, any use to which the land may be put in future should not be taken into consideration in determining its value but the valuation shall be determined according to the market-value then existing of the land or building in the position that the matters then were. That seems to me quite clear on the terms of that sub-section and that was the view which was adopted by this Court in the case of *Harish Chandra Neogy v. The Secretary of State for India* (1). At page 878, the learned Judges in giving the judgment made the following remarks: "Section 557 of the Calcutta Municipal Act precludes any valuation based on the most advantageous disposition of land, e.g., a valuation of *bustee* land on the supposition of its adaptability for use as building land to carry expensive structures which is the most advantageous use to which the land can be put in Calcutta." With these remarks I entirely agree. It seems to me that sub-section (c) of section 557 of the Calcutta Municipal Act precludes evidence being given of other purposes to which *bustee* lands can be put in future. Then comes sub-section (d) of section 557. Sub-section (d) provides "the market-value of the land or building shall, until the contrary is shown, be presumed for the purposes of the said clause *first* of sub-section (1) of section 23," which means section 23 of the Land Acquisition Act

(1) (1907) 11 C. W. N. 875, 878.

of 1894, "to be twenty-five times the annual value of the property, as entered in the assessment-book prescribed by this Act." That of course is a rebuttable presumption because the sub-section states that that presumption is to be made only until the contrary is shown, and it is only until the contrary is shown that the Court is entitled to presume that twenty-five times the annual value of the property as entered in the assessment-book is the value of the property within the meaning of sub-section (c). The only point in this case is, therefore, whether the learned Judge of the Court below rightly excluded the evidence, as appears, first of all, from p. 141 of the printed paper-book relating to the under tenants and the rents paid by them for land and structures thereupon. In my opinion, the learned Judge rightly refused to admit evidence relating to the undertenants and the rents paid by them; and that matter is not relevant for the purpose of ascertaining the market-value as defined by sub-section (c) of section 557. The other evidence, which the learned Judge rejected, was the questions put to a valuer with regard to sales of other lands in the neighbourhood which were not *bustee* lands. In ordinary cases under section 23 of the Land Acquisition Act, that evidence would have been admissible, but the case of *Harish Chandra Neogy v. The Secretary of State for India* (1), to which I have already referred, shows quite clearly that, in the opinion of the learned Judges in that case, such evidence is not admissible; and with that opinion I agree. It seems to me that the learned Judge was perfectly justified in refusing to allow these questions to be put to the witness Krishna Chunder Banerjee as appears from pp. 143 and 144 of the paper-book before us. That being so, the learned Judge, in my opinion,

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proceeded on a correct basis to arrive at the value of this land as provided by section 557 of the Calcutta Municipal Act. That being so, the present appeal fails and must be dismissed with costs.

RICHARDSON J. I agree.

S.K.B.

*Appeal dismissed.*

PRIYV COUNCIL.

P. C. \*  
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 March 9, 10,  
 11, 25.

HARENDRA LAL ROY CHOWDHURI

v.

HARIDAS DEBI.

[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

*Registration—Registration Act (III of 1877) ss. 28, 30 (b) and 49—Property comprised in mortgage, non-existence of—Onus of proof—Effect of registration by officer not having jurisdiction—Mortgagee, title of—Amendment of Schedule to mortgage deed—Property substituted not belonging to mortgagor—Fictitious entry in Schedule to get deed registered in Calcutta—Concurrent findings of fact as to mistake in entries in Schedule—No evidence showing mistake.*

The plaintiffs' (appellants') claim was based on a mortgage decree passed in a suit brought in the High Court at Calcutta on its Original Side to enforce a mortgage executed in the plaintiff's favour. The defendants (respondents) were the mortgagor (who did not appear) and two other persons who disputed the mortgagee's title. These defendants (who had not been parties to the suit on the mortgage) alleged that the mortgage deed had not been legally registered, because no portion of the property mortgaged was situated in Calcutta where the deed had been registered, and the decree had therefore been made by a Court which had no jurisdiction to entertain a suit on the mortgage, and the plaintiff had no title to maintain the suit. The only portion of the property in the mortgage deed alleged in the suit on the mortgage to be situate in Calcutta, was parcel No. 28 in the Schedule, and was described as "25 Guru Das Street ;"

\* Present : LORD DUNEDIN, LORD MOULTON, SIR JOHN EDGE, AND MR. AMBER ALY.